

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JHOHAN LEMOS,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT, P.O. ELVIS MERIZALDE (Shield No.: 26862)
and P.O. PEDRO VALLECILLO (Shield No.: 30714),

Defendants,

Index No.:

COMPLAINT

PLAINTIFF, by his attorneys, Reingold & Tucker, as and for his Complaint, hereby alleges the following, upon information and belief:

1. At all times herein mentioned, plaintiff was, and remains, a resident of the County of Kings, City and State of New York.

2. At times herein mentioned, defendant, THE CITY OF NEW YORK was, and still is, a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.

3. At all times herein mentioned, defendant, THE NEW YORK CITY POLICE DEPARTMENT was, and still is, an agency and/or department of defendant THE CITY OF NEW YORK, duly organized and existing under by virtue of the laws of the State of New York.

4. Plaintiff has complied with all of the applicable Sections of the General Municipal Law, which are conditions precedent to the bringing of this action against the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT.

5. On the 15th day of June, 2015, plaintiff's Notice of Claim and Intention to Sue were

duly served upon and filed with the Office of the Comptroller of the City of New York; said notice was filed within ninety (90) days after the cause of action herein accrued.

6. At least thirty (30) days have elapsed since the demand or claim upon which this action is predicated was presented to the City for adjustment and that it has neglected and/or refused to make adjustment or payment thereof. That this action is commenced within one year and (90) days after the cause of action accrued.

7. On or about the 20th day of September, 2014, and continuing through October 31, 2014, while plaintiff was lawfully and legally located outside of premises known as and by 4015 5th Avenue, County of Kings, City and State of New York, also known as El Tesoro Ecuatoriano Restaurant, without a warrant and without provocation, justification or cause, defendants, their agents, servants and/or employees did, assault, batter, involuntarily arrest, incarcerate, and prosecute or cause the prosecution of the plaintiff, thereby depriving him of his State and Federal, Civil and Constitutional Rights, and did otherwise cause injury. Plaintiff's criminal action was dismissed on or about April 8, 2015.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANTS THE CITY OF NEW YORK
AND THE NEW YORK CITY POLICE DEPARTMENT**

8. These defendants, their agents, servants and/or employees were negligent in causing, permitting and allowing the plaintiff to be falsely accused, arrested, prosecuted and held illegally by police officers of The City of New York; in failing to adequately hire and train said police officers; in failing to discharge said police officers although the City knew, or should have known, that said officers were a danger and nuisance to the public, and, more particularly, to plaintiff herein; in violating the federal and state constitutional and civil rights of the plaintiff herein, and; in all other ways the defendants were negligent, careless and reckless.

9. That solely as a result of the foregoing, the plaintiff has been caused to suffer severe and permanent injuries including mental anguish.

10. That the plaintiff did not contribute to the manner of the happening of the event by any act or omission on his part. That the occurrence took place solely and wholly as a result of the negligence on the part of the defendants herein as aforesaid, there being no contributory negligence on the part of the plaintiff herein.

11. That by reason of the foregoing, the plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

12. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "11" inclusive, with the same force and effect as if fully set forth at length herein.

13. As a result of the foregoing, the defendants, by these false charges, defamed the good name of the plaintiff.

14. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

15. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "14" inclusive, with the same force and effect as if fully set forth at length herein.

16. By reason of the foregoing the plaintiff was falsely arrested and unlawfully imprisoned.

17. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the

jurisdictional limits of all lower courts.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

18. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "17" inclusive, with the same force and effect as if fully set forth at length herein.

19. The plaintiff's state and federal constitutional and civil rights have been violated.

20. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

21. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "20" inclusive, with the same force and effect as if fully set forth at length herein.

22. As a result of the foregoing, defendants are guilty of the intentional infliction of emotional distress upon plaintiff.

23. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

24. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "23" inclusive, with the same force and effect as if fully set forth at length herein.

25. As a result of the foregoing, defendants are guilty of assault and battery.

26. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

27. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "26" inclusive, with the same force and effect as if fully set forth at length herein.

28. As a result of the foregoing, defendants are guilty of maliciously prosecuting or causing the malicious prosecution of plaintiff.

29. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS
ELVIS MERIZALDE AND PEDRO VALLECILLO**

30. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "29" inclusive, with the same force and effect as if fully set forth at length herein.

31. As a result of the foregoing, these defendants violated plaintiff's civil rights pursuant to 42 U.S.C. § 1983 and his rights under the U.S. Constitution, Bill of Rights and the New York State Constitution.

32. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A NINTH CAUSE OF ACTION AGAINST DEFENDANTS
THE CITY OF NEW YORK AND THE NEW YORK CITY POLICE DEPARTMENT**

33. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbers "1" through "32" inclusive, with the same force and effect as if fully set forth at length herein.

34. Defendant violated plaintiff's civil rights pursuant to 42 U.S.C. § 1983 by instituting

policy and pattern of a quota system for arresting individuals resulting in stopping, searching and/or arresting individuals without probable to do so.

35. By reason of the foregoing, plaintiff has been damaged in a sum that exceeds the jurisdictional limits of all lower courts.

WHEREFORE, plaintiffs demand judgment against defendants in the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action in amounts that exceed the jurisdictional limits of all lower courts, which otherwise have jurisdiction, such amounts to be determined upon the trial of this action, together with punitive damages and the costs and disbursements of this action.

Yours, etc.,

/s/ Jordan W. Tucker

REINGOLD & TUCKER

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